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KEY PROVISIONS OF LEGAL REGULATION OF STATE RESPONSIBILITY FOR INTERNATIONALLY WRONGFUL ACTS

The twentieth century was a period when humanity had a lot to face a number of international problems. Violation of humanitarian law, permanent armed conflicts forced the international community to take measures to ensure the world order, to create bodies for making subjects of law answerable for their actions, to impose sanctions to prevent violations.

In international law there is a general principle according to which an international legal act of a state entails international legal liability. An act of a state can be considered as conduct of any state's bodies, irrespective of its position in a system of a state, but on conditions that such a body acts officially. However, a state can be conferred conduct of entities or formations which are non-state bodies if they authorized to implement elements of state power. Also, persons not classified as organs of the state may still be imputable, when they are otherwise empowered to exercise elements of governmental authority, and act in that capacity in the particular instance. Persons or entities not performing public functions may equally be imputable, if they in fact acted under the direction or control of the state.

The question of making states answerable for their actions is debatable. This issue appeared after the First World War, when international relations strengthened the idea of crime of aggressive war. This idea, after passing through a number of international legal acts, had gradually turned into effective principles of international law.

But the pace of development of this institution during all the time has not been as high as expected. The reason is difficulties of finding solutions that would satisfy the majority states of the world.

Thus, until recently, the theory of the law of state responsibility was not well developed. The position has now changed, with the adoption of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts («Draft Articles») by the International Law Commission (ILC) in August 2001. They have already been cited by the International Court of Justice and have generally been well received.

The draft articles are concerned only with the determination of the rules governing the international responsibility of the State for internationally wrongful acts, that is to say, the rules that govern all the new legal relationships to which an internationally wrongful act on the part of a State may give rise in different cases. The Draft Articles are a combination of codification and progressive development. Articles codify the rules governing the responsibility

of States for internationally wrongful acts «in general», not simply in certain particular sectors.

According to the Draft Articles, an internationally wrongful act must be attributable to the state under international law and constitute a breach of an international obligation of the state.

The international responsibility of the State is made up of a set of legal situations which result from the breach of any international obligation, whether imposed by the rules governing one particular matter or by those governing another.

The «Breach of an international obligation» is defined as «an act... not in conformity with what is required... by that obligation.». The obligation may derive from a treaty, from custom, or from a general principle of law. Furthermore, the state cannot avoid responsibility by declaring something legal under its own domestic law.

Some older cases and commentaries discuss whether state responsibility is based on notions of fault or strict liability. It may be said that states are more «strictly liable» for the actions of their officials than for the actions of private individuals. In the latter case, it may be necessary to prove some «failure to control» the private individuals (i.e. «fault») before the state itself is held responsible. The articles leave it to the primary rules of obligation to determine whether the wrongfulness of an act depends on fault, intention, lack of diligence, or the like.

According to the Draft Articles the breach of an international obligation may entail two types of legal consequences. First one creates new obligations for the breaching state, principally, duties of cessation and non-repetition (Article 30), and a duty to make full reparation (Article 31). Article 33(1) characterizes discloses secondary obligations. The Article indirectly admits that states may owe secondary obligations to non-state actors such as individuals or international organizations.

The Second legal consequence consists in the articles which create new rights for injured states, principally, the right to invoke responsibility (Articles 42 and 48) and a limited right to take countermeasures (Articles 49-53). All these rights considered to be state-centered and do not deal with how state responsibility is to be implemented.

The problem of international responsibility has become topical in the modern World. There were some examples in history when states were held responsible for unlawful acts and particularly for international crimes. For instance the Nuremberg Trials which were series of military tribunals, held by the main victorious Allied forces of World War II, most notable for the prosecution of prominent members of the political, military, and economic leadership of the defeated Nazi Germany.

Although the issue of making states answerable for their actions is disputable it should be developed. Because an international responsibility is a peculiar guarantee of international security and stability in the whole World.